

The fact that all the customers of a reseller of fuel hold certificates of public convenience does not allow a receiver of fuel to sell fuel tax free to the reseller under Section 2a of the Motor Fuel Tax Law. (This is a PLR).

November 19, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of October 19, 2001 including the memo to the Department's Motor Fuel Tax Division and the follow up information received in the Department's Legal Services Office on November 5, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter of October 19, 2001, you have stated and made inquiry as follows:

Please find and accept the two attached requests for a Private Letter Rulings. They are in regard to the \$.003 per USG tax imposed by Illinois Reg. Section 500.202(a) and the exemption for that tax provided by Illinois Reg. Section 500.202(c) and the \$.008 per USG Environmental Impact Fee imposed by Article 3 of the Environmental Impact Fee Law (415 ILCS 125/310) and the exemption for that fee provided by the same statute.

Any correspondence regarding these requests can be mailed or faxed to:

...

If you have any questions or need additional information, please don't hesitate to contact me. Thank you for your consideration.

In your memorandum of October 13, 2001, you have stated and made inquiry as follows:

This is a request for a Private Letter Ruling regarding the \$.003 per USG tax imposed by Illinois Reg. §500.202(a) and the exemption for that tax provided by Illinois Reg. §500.202(c).

FACTS:

Illinois Regulation §500.202(a) imposes a tax of \$.003 per USG tax on receivers of fuel in Illinois. BBB is a licensed Receiver, as defined by Title 86, Reg. §501.100 of the Illinois Department of Revenue ('IL DOR') Regulations. BBB sells fuel to AAA at CITY's PLACE.

AAA is a STATE Corporation licensed for purposes of the Illinois Prepaid Sales Tax on motor fuel. AAA has no physical contact with Illinois. Their activity in Illinois consists of receiving an order for jet fuel, via telephone, from a customer in Illinois and immediately purchasing and reselling the fuel to the customer. AAA acts as a fuel broker between BBB, the supplier, and the end user. AAA is not a producer or refiner of fuels and does not import or export fuel. AAA does not operate an Illinois bulk plant and does not have active bulk storage capacity of 30,000 gallons or more. Although AAA bills the customer for the sale, it does not take possession of the fuel or bear any risk of loss related to the fuel. The billing process is merely an administrative convenience AAA offers to its customers. AAA's customers are composed solely of Certified Air Carriers ('holders of Certificates of Public Convenience').

AAA maintains that fuel sold by BBB to AAA is exempt from the tax under Reg. §500.202(c). All cites and references are to Regulations prescribed by the Illinois Department of Revenue unless otherwise noted.

ISSUE:

Liability:

In the event the tax should be imposed on the transaction in question, what party is liable for the tax imposed by §500.202(a)?

Exemption:

Does fuel sold by BBB to AAA at CITY's PLACE qualify for the exemption under Reg. §500.202(c)?

SHORT ANSWER:

Liability:

R is liable for the tax imposed by §500.202(a).

Exemption:

Fuel sold to AAA's customers by BBB at CITY's PLACEports qualifies for the exemption provided in Reg. §500.202(c) because the tax is not imposed on the receipt or importation of fuel at PLACE, which is sold to or used by holders of Certificates of Public Convenience (Certified Air Carriers). Because fuel sold by BBB to AAA's customers, is only sold to or used by holders of Certificates of Public Convenience, the tax is not imposed on the fuel received by BBB at CITY's PLACE.

LAW:

Reg. §500.202 sets forth the basis and rate of tax:

'a) Except as hereinafter provided, on and after January 1, 1990 and prior to January 1, 1998, at a tax of three-tenths of a cent per gallon is imposed upon the privilege of being a receiver in this State of fuel for sale or use.

b) The tax shall be paid by the receiver in this State who first sells or uses fuel. In the case of a sale, the tax shall be stated as a separate item on the invoice.

c) For the purpose of the tax imposed by this Section, being a receiver of 'motor fuel' as defined by Section 1.1 of the Act, and aviation fuels, home heating oil and kerosene, but excluding liquefied petroleum gases, is subject to tax without regard to whether the fuel is intended to be used for operation of motor vehicles on the public highways and waters. However, no such tax shall be imposed upon the importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, for years prior to 1991, and over 170,000 operations per year beginning in 1991, located in a city of more than 1,000,000 inhabitants for sale to or use by holders of Certificates of Public Convenience and Necessity or foreign air carrier permits, issued by the United States Department of Transportation, and the air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above. .'

Liability:

According to Reg. §500.202(b) the tax, '[S]hall be paid by the receiver in this State who first sells or uses fuel'. Therefore, when the tax is applicable, it is the liability of the 'first' party who imports or receives the fuel, to pay the tax.

Exemption:

CITY's PLACEs are the only PLACE which currently fit the requirements of Reg. §500.202(c) states that, '[N]o such tax shall be imposed upon the importation or receipt of aviation fuels and kerosene...' at CITY's [PLACE] '[F]or sale to or use by holders of Certificates of Public Convenience and Necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates...', This paragraph clearly states that no tax is imposed on receipt or importation of fuel which is sold to or used by holders of Certificates of Public Convenience and Necessity, or their air carrier affiliates. Therefore, if the fuel is sold to or used by holders of Certificates of Public Convenience and Necessity, the tax is never imposed on the fuel when it is received or imported. There is no way to assess or collect a tax if the tax has never been imposed on the fuel.

ANALYSIS:

Liability:

AAA does not import or receive fuel in Illinois. AAA's suppliers, BBB, are the importers and receivers of fuel in the state and are therefore liable for the tax in question (Reg. §500.202(b)).

Exemption:

In order for the exemption from the \$.003 per USG tax to apply, two requirements of Reg. §500.202(c) must be fulfilled in the current fact pattern. First, the fuel has to be received or imported into the State of Illinois at CITY's PLACE. Second, the fuel must be sold to or used by holders of Certificates of Public Convenience. AAA's customer base is composed solely of certified air carriers (holders of Certificates of Public Convenience). Because the fuel AAA brokers and invoices is only sold to or used by holders of Certificates of Public Convenience and the fuel is received in Illinois by AAA's suppliers, the two requirements of Reg. §500.202(c) are fulfilled and no \$.003 per USG tax is imposed on any fuel received for AAA by its suppliers. Therefore, neither BBB nor AAA is subject to the \$.003 per USG tax.

POLICY CONCERN:

The exemption set forth under Reg. §500.202(c) is provided to encourage licensed commercial aviation in CITY's airports. This is apparent in the language, '[For sale to or use by holders of Certificates of Public Convenience and Necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above...'. After the September 11, 2001 events of the World Trade Center tragedy, the purpose of this statute has never been more important. To impose the tax simply because a reseller of fuel, who's entire client base is composed of holders of Certificates of Public Convenience, enters into the transaction, is to completely undermine the purpose of the exemption. In the interest of promoting commercial aviation and aiding the airline industry in its recovery from the World Trade Center tragedy, the original intent of the statute should be of paramount concern.

The tax you are referring to, commonly known as the Underground Storage Tank Tax, is set forth in Section 2a of the Motor Fuel Tax Law. 35 ILCS 505/2a. The statute provides that "[e]xcept as hereinafter provided, on and after January 1, 1990 and before January 1, 2013, a tax of three-tenths of a cent per gallon is imposed upon the privilege of being a receiver in this State of fuel for sale or use." The tax is paid by the receiver in Illinois who first sells or uses fuel. In the case of a sale, the tax must be stated as a separate item on the invoice.

Section 2a also provides that the tax is not imposed "upon the importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, for years prior to 1991, and over 170,000 operations per year beginning in 1991, located in a city of more than 1,000,000 inhabitants for sale to or use by holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above." In addition, Section 2a provides that "no such tax shall be imposed when the sale is made...to a person holding a valid license as a receiver."

You have asked whether sales of fuel made by BBB to AAA can qualify for exemption from tax. You have indicated that AAA is not licensed as a receiver. Therefore, BBB may not sell fuel to AAA tax-free on that basis. You have also not indicated that AAA is the holder of a certificate of public convenience and necessity or foreign air carrier permit, issued by the United States Department of Transportation, or an air carrier affiliate of such a certificate or permit holder. Therefore, we are unable to advise that BBB's sales to AAA can qualify for tax-free treatment on that basis. This is

because the statute provides that it is the first sale or use of fuel upon which the tax is based. You have stated that AAA purchases the fuel from BBB and resells it to its customers. Therefore AAA acts not as a broker, but as a reseller of fuel. The fact that AAA's customers hold certificates of public convenience does not allow BBB to sell fuel tax-free to AAA.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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